

Minutes of the Board of Adjustment meeting held on Monday, November 14, 2011, at 5:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Preston Olsen, Chair  
Roger Ishino, Vice-Chair  
Joyce McStotts  
Travis Nay  
Tim Tingey, Administrative & Development Services Director  
Chad Wilkinson, Community & Economic Development Manager  
G.L. Critchfield, Deputy City Attorney  
Citizens

Excused: Rosi Haidenthaller

The Staff Review meeting was held from 5:15 to 5:30 p.m. The Board of Adjustment members briefly reviewed the applications. An audio recording is available for review in the Community & Economic Development office.

Preston Olsen explained that variance requests are reviewed on their own merit and must be based on some type of hardship or unusual circumstance for the property and is based on state outlined criteria, and that financial issues are not considered a hardship.

#### APPROVAL OF MINUTES

Joyce McStotts made a motion to approve the minutes from September 19, 2011 and October 10, 2011 as written. Travis Nay seconded the motion.

A voice vote was made. The motion passed 4-0.

#### CONFLICT OF INTEREST

There were no conflicts of interest for this agenda.

#### CASE #1439 – TRUONG PROPERTIES – 5789-5795 South State St. - Project #11-89

Tina Sperry was the applicant present to represent this request. Chad Wilkinson reviewed the location and request for a landscaping variance. This property is located within the C-D-C (commercial) district. Recently the two properties have been combined into one parcel. The area where the variance is being requested is in the northeast portion of the property. Municipal City Code Section 17.68.030(A) requires landscaping and related improvements to be installed when a Conditional Use Permit is required. Murray City Code Section 17.160.100.D requires a minimum 5 ft. depth of landscaping adjacent to off-street parking within the yard area providing it does not abut residential zoning. Section 17.160.100.F requires a minimum of 10% of the site to be landscaped. The applicant is requesting a landscaping variance regarding the total percentage of landscaping required, and to not install a 5 ft. depth of landscaping adjoining the property boundary behind the building. A Conditional Use Permit was recently approved by the planning commission for a pawn shop business on the property. One of the conditions of approval was that landscaping be brought up to code requirements on the site including the landscaping at the back of the building. The distance from the building to the rear yard property boundary is 38 ft. and with the 20 ft. required aisle width for 60% angled parking and 18 ft. length parking stalls, there is not adequate width to install the 5 ft depth of landscaping. The driveway is one way traffic flow with the 60 degree

angled parking. The site has been nonconforming regarding the total landscaping required on site. The site totals about 1 acre which requires 10% of the site to be landscaped whereas the current site has about 6% total landscaping. At the time the buildings were constructed in 1955, the zoning ordinance did not require the 10% total landscaping. The site is also nonconforming regarding the required total number of parking stalls with all of the existing buildings. As it is, it is difficult to provide adequate parking for businesses within its boundaries. It is not possible to provide the required landscaping without eliminating more parking spaces. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development Staff finds that the proposal meets the standards for a variance. Therefore, staff recommends approval of the landscaping variance.

Ms. McStotts asked if this property had received another variance in the past. Mr. Wilkinson responded in the affirmative. He explained a variance was granted several years ago for a landscaping setback due to the nonconforming setback distance of the building.

Tina Sperry, 1559 West 3860 South, West Valley, stated that the existing parking is extremely important for operating two businesses in the building. If there isn't enough parking, two buildings will remain vacant.

The discussion was then opened up to public comment. No comment was made and the public comment section was closed.

Joyce McStotts made a motion to grant the variance as requested. Seconded by Travis Nay.

Call vote recorded by Chad Wilkinson.

A \_\_\_\_\_ Ms. McStotts

A \_\_\_\_\_ Mr. Nay

A \_\_\_\_\_ Mr. Olsen

A \_\_\_\_\_ Mr. Ishino

Motion passed 4-0.

Ms. McStotts made the motion to approve the Findings of Fact for Truong Properties as written. Mr. Nay seconded the motion.

A voice vote was made. Motion passed 4-0.

CASE #1440 – JAMES & CYNTHIA MCINTYRE – 558 East 5600 South - Project #11-101

Jim McIntyre was present to represent this request. Chad Wilkinson reviewed the location and request for a variance to the accessory structure maximum height standards of the A-1 (agricultural) zoning district. Murray City Code Section 17.92.090 limits the height of accessory buildings in the A-1 zoning district to the lesser of 20 feet or the height of the residential dwelling on the property. The property is approximately

2.86 acres in size. The primary use of the property is single family residential which is a permitted use in the zoning district and the property is currently occupied by a residence and some small accessory structures. The applicant proposes to construct an accessory structure (detached garage) approximately 65 feet by 60 feet (3,900 square feet) in area and approximately 35 feet in height. The applicant requests a variance of 15 feet in order to exceed the maximum 20 foot height limitation for accessory structures. The land use ordinance provides a maximum height of 20 feet or the height of the residential structure, whichever is less, for accessory structures. The proposed accessory structure is shown 5 feet from the south property line.

A notice was sent to surrounding property owners on October 26, 2011. Staff has received phone calls from adjoining property owners with concerns related to the variance. In addition, staff has received a written response from two of the neighbors. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development Staff finds that the proposal does not meet the standards for a variance. Therefore, staff recommends denial.

James McIntyre, 558 East 5600 South, stated that he has lived at the property over 40 years, and during this time he has been able to build almost anything he wanted. When Murray City annexed his property in, he was under the impression that he still had the same privileges that he previously had. Mr. McIntyre is requesting not to be treated any different than neighbors, Shawn Bradley or Joe Sorenson were treated when they were given approval to build their structures.

Mr. Nay asked why he doesn't build it closer to his home. Mr. McIntyre responded that on his property he has a bridge that crosses over Little Cottonwood Creek that would be blocked by the garage and getting to the other side of the property would be impossible.

Mr. Ishino asked why the storage structure needs to be 35 ft high. Mr. McIntyre responded that it doesn't need to be that tall and the height is purely for aesthetics.

Mr. Olsen explained that if the Board is to grant variances, they have must comply with statutes and state code. Mr. McIntyre explained that all of his neighbors have been granted variances to add structures in the past and he just wishes to be treated the same as all the neighbors around him.

Melvin McQuarrie, 3075 E Kennedy, Salt Lake City, stated he is the engineer for Mr. McIntyre. He pointed out that the proposed structure could be 35 ft and still be functional, but to build a 20 ft structure with a flat roof would not be aesthetically pleasing. Mr. McQuarrie pointed out that the height requirement of 20 ft seems to be putting them in a gap that fits all zones whereas Mr. McIntyre's property falls in the A-1 zone and that doesn't seem to fit that particular zone. As it is, the City is trying to phase out the A-1 zone and make it into a multi-family. If Mr. McIntyre were to sub-divide his lot into single family homes, they would then be able to build a 35 ft structure in the very same location.

Ben Hathaway 60 E South Temple, Salt Lake City, representing Joe and Kathleen Sorensen, neighbors of Mr. McIntyre, pointed out that by looking at the photos of the proposed structure, the top of the garage door to the top of the structure demonstrates

that the 35 ft height isn't necessary. Just by looking at the size of the objects that Mr. McIntyre is going to store in the proposed structure, there doesn't seem to be a demonstration of a hardship on Mr. McIntyre's part. Given the square footage and the footprint, Mr. McIntyre could easily construct a building that is in compliance with the zoning requirement. Therefore, Joe and Kathleen Sorensen would urge the Board to follow the recommendation of Staff and deny the proposed variance.

Ron Ferrin, 5288 Havenwood, stated he is a neighbor of Mr. McIntyre. He showed photographs of the proposed site in relationship to his property. He stated that the homes in that area are smaller and to have a structure that is 35 feet in height and only 5 feet from the property boundary would really be a hardship for the neighbors to look at.

Mr. Olsen stated that there were two letters and one voicemail from neighbors opposing this variance request.

Mr. McIntyre stated that the boats that he wishes to store in the proposed structure require a 12 foot door to get in and currently there is a 14 foot door on the plan. He would also like to be able to have some room in the structure to do repairs to his boats as needed. The additional height is needed to lift the motor out of the boats. He asked what the maximum is and he will just work with that.

Mr. Olsen asked Mr. Wilkinson how the height is measured. Mr. Wilkinson replied that in the code, for accessory buildings, the height is measured from grade to the top most peak of the building. That grade is determined either at the exterior wall or at a point 6 feet from that exterior wall.

The discussion was then opened up to public comment. No comment was made and public comment section was closed.

Mr. Nay suggested that the height limit is for visual mitigation for the protection of the neighbor. Ms. McStotts responded that the Mr. McIntyre has not been able to show any hardship to the 5 points of criteria in order for the Board to grant the variance and seems that the only reason for wanting the variance is for reasons that suit his wants and needs.

Mr. Olsen reminded everyone that in order for the Board to approve a variance, they must not only abide by the criteria stated, but also find a special circumstance of the property that would merit granting a variance to the current land ordinances. Usually when a variance is granted, it's because there is something unusual from meeting the requirements and not that the land owner just doesn't wish to meet the requirements.

Mr. Ishino made a motion to deny the variance request based on the Findings of Fact.

Ms. McStotts seconded the motion.

Call vote recorded by Chad Wilkinson.

A \_\_\_\_\_ Ms. McStotts

A \_\_\_\_\_ Mr. Nay

A \_\_\_\_\_ Mr. Olsen

A \_\_\_\_\_ Mr. Ishino

Motion passed 4-0.

Ms. McStotts made a motion to accept the Findings of Fact as written. Seconded by Mr. Ishino.

Mr. Olsen then wanted to backtrack and have a motion for the Findings of Fact for item #3, Truong Properties.

A voice vote was made. Motion passed 4-0.

CASE #1441 – BRAD & DEBBIE GRIEVE – 5313 South Baker Street - Project #11-102

Brad and Debra Grieve were the applicants present to represent this request. Mr. Chad Wilkinson reviewed the location and request for a front yard fence height variance for the property addressed 5313 South Baker Street zoned R-M-10 (multiple family zone). Murray City Code Section 17.64.020 limits solid fences to a maximum of 3 ft. high located within the front yard setback area in all residential zones. Municipal Code Section 17.76.160 requires a substantial 6 ft high fence to be installed around a swimming pool. The applicant is requesting a 3 ft. fence height variance for a 6 ft. high fence to be located in the front yard setback area of a residential zone. This property is part of the Stoneybrook Planned Unit Development which was approved by the Murray Planning Commission in 1994. The minimum front yard setback approved for the Stoneybrook Planned Unit Development is 20 ft. The applicant has applied for a building permit to construct a swimming pool in the north side yard area of the dwelling and to construct a 6 ft. high fence within 5 ft. of the front yard property line. There is a hill side that is located at the north and east side of the Grieve property which angles from the back yard toward the side yard toward Baker Street. The swimming pool regulation requires a substantial 6 ft. high fence to be installed surrounding a swimming pool. It also includes a requirement for self-latching gates that close themselves. The property is located to the east side of the cul-de-sac near the end of Baker Street and this is the last house at the east side of the street near the cul-de-sac. The applicant is proposing to angle the fence back from the driveway toward the street to allow for adequate visibility to the sidewalk and street. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development staff finds that the proposal meets the standards for a variance. Therefore, staff recommends approval subject to the following condition:

1. The fence shall be installed to meet the swimming pool fence regulations.

Mr. Ishino asked why the fence needed to be pushed out to the 5 ft setback. Mr. Wilkinson responded by pointing out that there wouldn't be any way to circulate around the pool without the setback. Mr. Ishino then asked if a smaller pool could be built. Mr. Wilkinson responded that it is possible that a smaller pool could be put in, but the lot is odd shaped and staff feels that there is a unique circumstance that constitutes a hardship when considering this variance request.

Brad Grieve, 5313 South Baker Street, indicated that by putting in a 6 ft fence he would lose the view of the landscape due to the slope of the yard. When he applied for the pool permit, he was unaware that there needed to be a 6 ft high fence, but then realized that it was necessary for the safety of the neighbors. The dimensions of the pool measure 14' x 24' and with a sidewalk that borders the pool for safety. Mr. Grieve stated that if he didn't apply for the variance the edge of the pool would be all the way back to the fence.

Mr. Olsen questioned why the variance was for only 3 feet. Mr. Wilkinson clarified by stating that 3 ft is the difference between the current fence Mr. Grieve already has and what is allowed by code as a solid fence.

Ms. McStotts asked if the fence will be located 5 ft off the property line. Mr. Wilkinson responded in the affirmative.

The discussion was then opened up to public comment. No comment was made and public comment section was closed.

Ms. McStotts made a motion to approve the variance according to the Findings of Fact as written, with the condition:

1. The fence shall be installed to meet the swimming pool fence regulations.

Mr. Ishino seconded the motion.

Call vote recorded by Chad Wilkinson.

A \_\_\_\_\_ Ms. McStotts

A \_\_\_\_\_ Mr. Nay

A \_\_\_\_\_ Mr. Olsen

A \_\_\_\_\_ Mr. Ishino

Motion passed 4-0.

Mr. Ishino made a motion to accept the Findings of Fact as written. Seconded by Mr. Nay.

A voice vote was made. Motion passed 4-0.

#### CASE #1442 – BMW OF MURRAY – 4742 South Brown Street – Project #11-103

John Firmage and Dave Clark were the applicants present to represent this request. Chad Wilkinson reviewed the location and request for a building addition to be connected to a building which is nonconforming with regard to building setback from the front property line. Also, the applicant is requesting variances with regard to the driveways access width and setback and landscaping standards located at the property addressed 4242 South Brown Street. The site is zoned C-D-C (Commercial Development Conditional). Murray City Code Section 17.52.040 allows the Board of Adjustment to approve a building addition to a nonconforming building provided the standards in Section 17.52.040.B can be met. Murray City Code Section 17.72.100 requires each drive access to be a minimum 25 ft. wide. Murray City Code Section

17.68.040 requires a minimum of 10 ft. depth of front landscaping. Murray City Code Section 17.160.100.D. requires a minimum of 5 ft. depth of landscaping adjacent to off street parking in the yard area. Municipal Code Section 17.72.110.2 requires a 5 ft. driveway setback from a side property line.

The existing building was constructed in about 1960 and is setback about 11 ft. from McHenry Street boundary line whereas the current ordinance requires a minimum 20 ft. front yard setback. The criteria for the expansion of the non-conforming building are different than the variance criteria. They are as follows:

1. The addition to or enlargement or moving of the building will be in harmony with one or more of the purposes of the title.
2. The proposed change does not impose unreasonable burden upon the lands located in the vicinity of the non-conforming use structure.

The proposed expansion met those standards and will provide for a reasonable expansion of an existing building. There is no interior setback for that building, so the new addition meets the requirements for the zone.

The applicant is also requesting variances with regard to the driveways access width and setback from the side property line. Two of the existing driveways are approx. 13 ft. wide at the north and east side of the building and the existing driveway at the west side of the building is 18.5 feet; whereas the zoning ordinance requires 25 ft. minimum width for two-way traffic flow. The applicant is proposing a 24 foot wide drive access to the west side of the building and a 23.25 foot wide drive access at the east side of the building and a 20 foot wide one-way drive onto Brown Street. Municipal Code Section 17.72.110.2 requires a five ft. setback from a side property line for a driveway. The drive access on Brown Street does not meet the required 5 foot setback with required landscaping. The applicant is requesting landscaping depth variances on the property. The landscaping ordinance requires 10 ft. minimum landscaping depth at the property frontage, whereas the site plan shows 9 feet 3 inches at the Brown Street frontage. Also, a minimum 5 foot depth of landscaping is required on interior boundary lines adjoining parking stalls, whereas the applicant is requesting a variance for 3.5 feet. All variance requests will still allow adequate maneuvering and circulation for the site. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, Community and Economic Development staff finds that the proposal meets the standards for the requested variances. Therefore, staff recommends approval.

Mr. Olsen asked Mr. Wilkinson whether or not all issues will be voted on separately. Mr. Wilkinson answered in the affirmative, stating that there should be a motion on the expansion of the non-conforming building and a separate motion on the variances. The findings have been combined, so only one motion is needed on those.

John Firmage, 4700 S. State Street, stated that if there were no questions he would just submit as recommended by staff.

The discussion was then opened up to public comment.

Steve Nelson, 4739 Brown Street, lives in the house across the street. Mr. Nelson wanted to know if there would be an increased traffic flow in front of his property because of the car wash. Mr. Firmage confirmed that they have tried in the past and will continue to keep all traffic to a minimum on Brown Street. Most of the ingress/egress will be on McHenry Street. The only possible traffic would be a delivery of a Mini Cooper to the site.

Dave Clark, 4735 S. State Street, commented that in actuality the traffic will be less, because as the cars are done being serviced they will be exiting onto State Street and not on Brown Street. Mr. Wilkinson commented that the car wash will not be a public car wash, but used internally for the vehicles that have been serviced.

Mr. Ishino made a motion that the variance on the expansion of an existing non-conforming building be approved. Seconded by Ms. McStotts.

Call vote recorded by Chad Wilkinson.

A \_\_\_\_\_ Ms. McStotts

A \_\_\_\_\_ Mr. Nay

A \_\_\_\_\_ Mr. Olsen

A \_\_\_\_\_ Mr. Ishino

Motion passed 4-0.

Ms. McStotts made a motion to approve the variance on the driveway access with the landscape variance including landscaping the small section the Board has recommended at the end of the parking. Seconded by Mr. Nay.

Call vote recorded by Chad Wilkinson.

A \_\_\_\_\_ Ms. McStotts

A \_\_\_\_\_ Mr. Nay

A \_\_\_\_\_ Mr. Olsen

A \_\_\_\_\_ Mr. Ishino

Motion passed 4-0.

Ms. McStotts made a motion to accept the joint Findings of Fact as written. Seconded by Mr. Ishino.

A voice vote was made. Motion passed 4-0.

CASE #1443 – COLONIAL HOUSE – 491 West 5300 South – Project #11-106

Preston Fain and Steven Sadiq were the applicants present to represent this request. Chad Wilkinson reviewed the location and request for a variance to the minimum sign separation standards for detached signs in the C-D-C zoning district for the property addressed 491 W. 5300 South. Murray City Code Section 17.48.160 A.2 requires a minimum separation of 200 feet between detached signs on the same property. The applicant proposes to construct a new monument sign on the west side of the property



along Green Street. The proposed sign is classified as a detached on site sign by the Code. Murray Code section 17.48.160 A.2. allows for more than one detached sign on a property provided the property has greater than 200 feet of frontage on a street and that the signs are separated by at least 200 feet as measured in a straight line. The proposed sign would be approximately 145 feet from the existing sign as measured in a straight line. The proposed sign would be 6 feet in height and 4 feet in width and appears to meet the other setback requirements of the code. The applicant has also applied for a Conditional Use Permit for an electronic message board sign to replace the existing sign on 5300 South. It appears that there would be the ability to move the existing sign in order to meet the separation standard. The state criteria states that hardship cannot be financial or self-imposed and Staff didn't see anything that would prevent the existing sign from being relocated. Based on review and analysis of the application material, subject site and surrounding area, State criteria, and applicable Murray Municipal Code sections, Community and Economic Development staff finds that the proposal does not meet the standards for a variance. Therefore, staff recommends denial.

Ms. McStotts asked Mr. Wilkinson if the applicant were to move the sign from the current spot to a spot that meets code, would it meet the separation requirement. Mr. Wilkinson responded in the affirmative. He stated that if the sign were to be moved the applicant could meet the separation standard. The one thing staff can't consider is, if by moving the sign, would it create a financial hardship. Mr. Wilkinson gave other options to moving the sign, such as putting up a pole sign or attaching signage to the building. Currently there is a monument sign up that meets the height requirement of 6 ft.

Preston Fain, of Fain Neon Sign Company, 2248 North 1450 East, Layton, stated that the entrance to the building is on the back side of the building and he would like to have a sign to establish an entrance to the business. Moving the current sign could be a problem due to disturbing soil where there has been a drainage issue on the property. Mr. Fain believes that by moving the sign to a different area in accordance with code, would be ineffective as it would not be visible for drivers traveling eastbound on 5300 South. He also stated that moving the sign is not a financial issue.

Matthew J. Storey, 491 West 5300 South, stated that he occupies half of the main floor in the Colonial House. Mr. Storey stated that his clients coming off of I-15 onto Green Street often drive right by the entrance of the building. This complaint has been made by other tenants in the building as well. Mr. Storey feels that by attaching a sign to the back side of the building will not accomplish informing the public as to what businesses are located in that building. By following code and placing another sign 200 ft apart, could potentially put that sign over the property line.

Mr. Olsen asked Mr. Fain if there was a certain size of sign that he could propose. Mr. Fain said that the original sign proposal was larger, but he could certainly go smaller if needed.

Mr. Ishino asked if the sign would be lighted. Mr. Fain responded that there are flood lights that are directed towards the sign.

Steven Sadiq, 491 West 5300 South, stated that he is the owner of the building. He said that he has had a lot of complaints that patrons cannot find the entrance to the building,

so he recommended to Mr. Fain that the sign be placed at the entrance. His concern is that if there is not a sign placed there, he will lose his tenants and not be able to pay his mortgage.

Ms. McStotts asked Mr. Wilkinson if a parking or enter/exit sign would be affected by the variance. Mr. Wilkinson stated that directional signage such as enter/exit signs are allowed. That kind of signage cannot have any commercial type verbiage on it such as the name of the building or the name of tenants listed on it and is limited on size, but can be approved.

Mr. Nay asked about restrictions for pole signage. Mr. Wilkinson replied that the same separation standards apply. However, it does give you additional height and size (1.5 square feet per linear foot of frontage, up to 300 square feet total). Monument signs are restricted on height and size (2 ft from property line and 15 ft from driveway entrance) for visibility reasons. The proposed size of the sign meets code, it just needs to meet the separation standard of 200 feet and must be 2 feet from the property line and have a 25 foot vision clearance at the intersection.

Mr. Fain stated that he has looked at putting signage directly on the building, but with the windows so close together, there wouldn't be enough room to list all the tenants in large enough print. Mr. Olsen pointed out to Mr. Fain that other buildings and businesses are able to do this and still list all of their business names. Mr. Fain believes that this is a unique situation in the way the property is positioned, where the entrance is in the back of the building.

Ms. McStotts asked why this building is unique from any other building that has a back side entrance. Mr. Fain responded that currently the sign is difficult to see when driving on 5300 South and feels that this isn't a normal situation.

Ms. McStotts brought up that the hardships the applicant brings up are understandable, but the bottom line is, the issues have not been addressed and all 5 criteria have not been met.

Mr. Nay pointed out that design elements meet the special circumstances attached to the property. In particular, the right hand turn lane off 5300 South and the bus stop limiting visibility are what make this property unique. The Intermountain Medical building across the street has the ability to advertise on two sides of their building without obstructing views. Mr. Fain pointed out that there is an island in the middle of the road, which also contributes to limited visibility.

Mr. Nay made a motion to grant a variance for two signs with these conditions; Point A – limit to alternative locations for the sign, Point B – design elements limit access and visibility from 5300 S. and Green Street, existing trees and bus stop, Point C – the other property owners on corner lots do have the ability to have 2 signs, Point D – it will not affect the general plan and will not be contrary to public interest, Point E – the existing signs support the spirit of the land ordinance, Point F – the two signs are no closer than 145 ft together. Additionally, it be limited to 26 sq ft on each face and not on the same street face.

Ms. McStotts seconded the motion

Call vote recorded by Chad Wilkinson.

A      Ms. McStotts

A      Mr. Nay

A      Mr. Olsen

N      Mr. Ishino

Motion passed 3-1.

Ms. McStotts made a motion to accept the revised Findings of Fact according to the stipulations and changes that were made in the motion and to give the Chair the approval to read those and meet his approval. Seconded by Mr. Nay.

A voice vote was made. Motion passed 4-0.

Meeting adjourned.

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Chad Wilkinson, Manager  
Community & Economic Development